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DISTRICT OF COLUMBIA DEPARTMENT
OF CONSUMER AND REGULATORY
AFFAIRS

Petitioner,

v.

XUYEN THI VU

Respondent.

Case No.: CR-C-07-100082
(ALJ Goode)

ORDER CONVENING SANCTIONS HEARING

I. INTRODUCTION

On November 20, 2007, I issued a Final Order granting Respondent's motion for summary judgment, invalidating the Government's denial of Respondent's Basic Business License application, and requiring the Government to issue Respondent a Class A Vendor's License no later than November 23, 2007. On November 28, 2007, Respondent filed a Motion to hold the Government and Joseph Schilling, Administrator, Business and Professional Licensing Administration ("BPLA"), in contempt for failing to comply with my the Final Order. Based on the Motion, I shall reopen the record to consider whether the facts warrant monetary sanctions against the Government and Mr. Schilling. D.C. Code, 2001 Ed. § 2-1831.09(a)(7) and (8). Toward that end, I hereby order that Joseph Schilling, Administrator, District of Columbia Business and Professional Licensing Administration and Jill Stern, General Counsel, Department of Consumer and Regulatory Affairs ("DCRA"), appear for a hearing on Thursday, December 13, 2007, at 9:30 a.m. The purpose for the hearing is to determine whether monetary sanctions

should be imposed against the Government and Mr. Schilling for the apparent violation a lawful order of this administrative court.

II. BACKGROUND

On May 31, 2007, the Government denied Respondent's application for a Basic Business License ("BBL"), because she allegedly had violated the "Clean Hands" certification in her application by failing to disclose that she owed the Government \$18,000 in fines and penalties for violations of the Civil Infractions Act (D.C. Code, 2001 Ed. §§ 2-1802.01(a)). *See* the May 31, 2007, Notice to Deny Basic Business License ("Notice"). On June 6, 2007, Respondent filed an appeal to challenge the denial of her application. At a status conference on October 25, 2007, the Government could not identify any specific Notices of Infraction ("NOIs") that were issued and served on Respondent that were outstanding and for which Respondent was liable for fines and penalties.

The Government was given another opportunity to establish the basis for its denial of Respondent's BBL by filing "a complete and comprehensive statement of the factual basis for the denial of Respondent's application for a Basic Business License" no later than November 9, 2007. *See* October 26, 2007, Scheduling Order, page 2. On November 9, 2007, the Government complied with Order and indicated that there were four outstanding NOIs; however, the Government acknowledged that liability had not attached to Respondent for any of the four NOIs. A status conference in this matter was held on November 15, 2007. Respondent Xuyen Thi Vu appeared with her attorney Ronald Webne, Esq., and Charles Thomas, Esq., appeared for the Government. Based on the Government's November 9, 2007, Response ("Government's Response"), Respondent moved orally for summary adjudication. OAH Rule 2828. Counsel for

the Government candidly conceded that there was no genuine issue of any material fact concerning this case, and offered no argument in opposition to Respondent's motion. Simply put, the \$18,000 fine and penalty arrearage did not exist. Therefore, as noted above, on November 20, 2007, I issued a Final Order granting Respondent's motion for summary judgment, invalidating the Government's denial of Respondent's Basic Business License, and requiring the Government to issue Respondent a Class A Vendor's License no later than November 23, 2007.

III. Discussion

According to Respondent's motion, Mr. Schilling has refused to comply with the November 20, 2007, Final Order and demands a new application from Respondent, which Mr. Schilling promises to "process."¹ The Government and Mr. Schilling's actions appear to violate a lawful order of this administrative court, as well as the agency's own regulations. The regulations governing BBL applications require that "[n]ot later than forty-five (45) days after filing a completed application for a vending business license, the applicant shall be notified by the Mayor of the Mayor's decision on the issuance or denial of the license." 24 DCMR 505.1 (emphasis added). Additionally, the regulations governing BPLA and the denial of BBL applications state that if the Government decides to deny an application, "[n]otice of the denial or suspension or revocation shall be given in writing, setting forth specifically the grounds therefor [sic]. . . ." 24 DCMR 509.4 (emphasis added). As previously noted, the \$18,000 arrearage in the written NOIs does not exist.

¹ In order to provide the Government a full opportunity to oppose Respondent's motion, I have set a deadline for submission of the Government's response that is before the scheduled hearing date.

In this case, Respondent filed an application for a BBL (Class A Vendor's License) on January 29, 2007, and the Government, through Mr. Schilling, did not issue its notice of denial until May 22, 2007, more than 45 days after Respondent filed her application. The Notice attributed the denial to four Notices of Infraction ("NOIs") that alleged Respondent was operating a vending stand without a license.² However, as noted in the November 20, 2007, Final Order on May 22, 2007, when the Notice was issued, the Government knew or should have known that the unproven allegations in these NOIs had not resulted in any judgment against Respondent. Worse yet, on May 22, 2007, when it issued the Notice, the Government knew that two of the four NOIs had been dismissed without prejudice because Respondent had never been served.

My November 20, 2007, Final Order contained a certificate of service showing that it was mailed to Jill Stern, General Counsel, Department of Consumer and Regulatory Affairs, and the Government's counsel of record, Charles Thomas, Esq. Thus, the Government had notice that it was required to issue Respondent a Class A Vendor's license no later than November 23, 2007. My Final Order clearly indicated that it had no bearing on any future enforcement actions and it also set forth the parties' right to appeal.

The apparent disregard of a Final Order of this administrative court without lawful basis is a serious matter. Withholding a license to operate a business has serious consequences for the license applicant and the fiscal wellbeing of this City, and can be done lawfully only within the framework of the governing statute and regulations. It appears that the Government and Mr. Schilling have ignored and violated Respondent's right to a fair hearing on the denial of her BBL

² One of the greatest ironies of this case is the fact that Respondent's BBL application was for a vendor's license; in other words, it was Respondent's attempt to bring her business into compliance with the very law that the Government indicated she was violating when it issued the NOIs.

application (as implementation of any Order resolving the matter is a crucial component of the fair hearing process). If this so, the Government and Mr. Schilling, in violating the Final Order, have violated Respondent's due process rights as well.

D.C. Code, 2001 Ed. § 2-1831.09 sets forth the powers, duties and liability of administrative law judges. Section 2-1831.09(b)(8) provides:

(b) In any case in which he or she presides, an Administrative Law Judge may:

(8) Impose monetary sanctions for failure to comply with a lawful order or lawful interlocutory order, other than an order that solely requires payment of a sum certain as a result of an admission or finding of liability for any infraction or violation that is civil in nature[.]

Therefore, I will schedule a hearing on December 13, 2007 at 9:30 a.m. At this hearing, Joseph Schilling, Administrator, BPLA, and Jill Stern, General Counsel (or Lori Parris, Esq.), Department of Consumer and Regulatory Affairs, shall appear and present evidence and argument why monetary sanction should not be imposed against the Government and Mr. Schilling for failing to comply with the Final Order dated November 20, 2007, for the reasons set forth herein. Respondent is permitted, but not required, to attend the December 13, 2007, hearing and present evidence and argument on this issue. If either Mr. Schilling or Ms. Stern fails to attend the hearing on December 13, 2007, I will issue a similar Sanctions Order directed specifically at them and designed to hold them jointly and severally liable for violating this order. While this administrative court does not take the imposition of sanctions lightly, the fair and efficient administration of justice is irreparably impaired by the failure of persons within the court's jurisdiction to comply with its lawful orders. This hearing will permit Mr. Schilling and the Government one last opportunity to comply with the law and fulfill its obligations to the citizenry we all serve.

IV. Order

Accordingly, it is 5th day of December 2007, hereby

ORDERED that Joseph Schilling, Administrator, Business and Professional Licensing Administration shall appear for a hearing to show cause why monetary sanctions should not be imposed against the Government and Mr. Schilling for violating the Final Order, dated November 20, 2007. The hearing shall be held on Thursday, December 13, 2007 at 9:30 a.m., at the Office of Administrative Hearings, 941 N. Capital Street, NE, Suite 9100, Washington, D.C. 20002; it is further

ORDERED that Jill Stern, General Counsel, Department of Consumer and Regulatory Affairs, shall appear for a hearing to show cause why monetary sanctions should not be imposed against the Government and Mr. Schilling for violating the Final Order, dated November 20, 2007, unless Ms. Stern elects to send Lori Parris, Deputy General Counsel. The hearing shall be held on Thursday, December 13, 2007 at 9:30 a.m., at the Office of Administrative Hearings, 941 N. Capital Street, NE, Suite 9100, Washington, D.C. 20002; it is further

ORDERED that any opposition to Respondent's motion for contempt and for sanctions shall be filed and served on opposing counsel no later than December 11, 2007; it is further

ORDERED that should Mr. Schilling and the Government comply with the November 20, 2007, Final Order by issuing Respondent her BBL as specified therein on or before December 11, 2007, and provide Respondent and this administrative court with notice of the

same on or before December 11, 2007, at 5:00 p.m., the parties should deem the December 13th sanctions hearing canceled without further notice from this administrative court.

December 5, 2007

 /SS/
Jesse P. Goode
Administrative Law Judge